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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 2664 of 2005
Date of decision: 10.9.2007

Jhuthar Singh **.....Appellant**

Versus

Sri Bhagwan and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sat Narain Yadav, Advocate for the appellant.

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RAJESH BINDAL, J.

Having failed in both the Courts below, appellant/plaintiff has approached this Court by filing the present Regular Second Appeal whereby suit filed by him for declaration and permanent injunction challenging the will executed by Mehar Chand in favour of respondent/defendants was dismissed.

Appellant/plaintiff, Ram Narain (father of respondent) and Mehar Chand were three brothers. Mehar Chand died issueless. However, he executed a registered will in favour of sons of one of his brother, namely, Ram Narain (respondent/defendant). It was this will, which was sought to be challenged in the suit filed by the appellant/plaintiff. Both the Courts below have found that the will was duly executed and registered. No suspicious circumstances were found, which could lead to the presumption that any fraud was committed while getting the will executed from Mehar Chand. The registered will Ex. DW1/1 carries photograph and thumb impression of the executant. One of the witness to the will was also examined. There was contradiction found in the evidence led by the appellant/plaintiff to prove that the executant of will was not keeping good health as one of the witness stated that he was suffering from piles whereas other stated that he was suffering from jaundice, however, there was no evidence on record that he was suffering from any ailment or he ever remained under treatment for loss of memory. The ration card of the

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executant of the will with the respondent/defendants was also produced by them, which shows that he was normally residing with them. It was not even the claim of the appellant/plaintiff that he ever served the deceased Mehar Chand, which could lead to some presumption in his favour.

With these facts concurrently found by both the Courts below, which could not be dislodged by the appellant/plaintiff by referring to any other material on record, I do not find any merit in the present appeal and the same is dismissed in limine.

September 10, 2007 **(Rajesh Bindal)**
Pka **Judge**